

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AEDES DE VENUSTAS, INC.,

Plaintiff,

07 Civ. 4530 (LTS) (THK)

vs.

VENUSTAS INTERNATIONAL, LLC,

Document Electronically Filed

Defendant.

DECLARATION OF JOSEPH M. HEPPT

JOSEPH M. HEPPT, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I represent the plaintiff, Aedes De Venustas, Inc., in the above captioned matter. As such, I have personal knowledge of the matters set forth herein and, if called to testify, I could and would competently testify thereto.

2. I submit this Declaration in further support of plaintiff's motion for a permanent injunction against the defendant's use of its trade name.

3. Attached as Exhibit A are selected pages from the deposition transcript of Robin Burns-McNeill to which plaintiff refers in support of its motion for injunctive relief.

4. Attached as Exhibit B are selected pages from the deposition transcript of Sam Ghusson to which plaintiff refers in support of its motion for injunctive relief.

5. Attached as Exhibit C are selected pages from the deposition transcript of Robert Gerstner to which plaintiff refers in support of its motion for injunctive relief.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on June 20, 2007.

/s

Joseph M. Heppt, Esq. (JH-4974)

EXHIBIT A

1
2 ORIGINAL
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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
4 AEDES DE VENUSTAS, INC.,

5 Plaintiff, Civil Action No.

6 -against- 1:07-04530

7 VENUSTAS INTERNATIONAL, LLC,

8 Defendants.
-----x

9
10 June 18, 2007

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12 3:13 p.m.
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** REDACTED TRANSCRIPT **

Deposition of ROBIN BURNS-McNEILL,
held at the offices of JOSEPH H. HEPPT, ESQ.,
521 Fifth Avenue, New York, New York, before
Vicky Galitsis, a Certified Shorthand
Reporter and Notary Public of the State of
New York.

GREENHOUSE REPORTING, INC.

363 Seventh Avenue - 20th Floor

New York, New York 10001

(212) 279-5108

1 R. Burns-McNeill

2 Q. If you could just give me a
3 summary of your professional background; the
4 companies you worked for, the years you work
5 there. I don't need to know the details of
6 what you did in each one, but just the
7 companies and the years?

8 A. Bloomingdale's from '74 to '83;
9 Calvin Klein Cosmetics Corporation from '83 to
10 '90; Estee Lauder from 1990 to '98; Victoria's
11 Secret from '98 to 2004.

12 And the current company that I am
13 with is since when we incorporated, I want to
14 say a year ago August. It's about 10 months
15 ago, so it would have been in '06 to present
16 is Venustas International.

17 I hope that's right.

18 Q. You did pretty well actually.

19 A. Okay, good.

20 Q. You said you were the CEO of
21 several companies. Which companies were
22 those?

23 A. Calvin Klein Cosmetics
24 Corporation, Estee Lauder, and Victoria's
25 Secret Beauty. And I'm chairman of the

1 R. Burns-McNeill
2 in half, we're doing the front end and they're
3 doing the back end -- or the other way around;
4 we're doing the back end and they're doing the
5 front.

6 Q. They're doing the retail, so
7 that's the front end, right?

8 A. Right, they are retail.

9 Q. How many full-time employees does
10 your company have?

11 A. I don't even know right now. I
12 know we're looking to max out eventually. I'd
13 say probably ten right now, ten or twelve. I
14 really don't know, because we're split in
15 New York and New Jersey.

16 Q. I was going to ask you how many
17 offices the company has. Is it just the two?

18 A. Yes.

19 Q. Where are most of the employees
20 located?

21 A. They're equally divided between
22 the two.

23 Q. You have been an executive in the
24 beauty industry for a number of years now,
25 correct?

1 R. Burns-McNeill

2 A. Yes.

3 Q. How would you describe your
4 personal management style?

5 A. Wonderful, I hope.

6 Q. Would you consider yourself to be
7 hands-on?

8 A. Are you talking about
9 historically or in my current job?

10 Q. Well, historically, let's start
11 with that.

12 A. Historically, I think I have a
13 style of hiring very talented people that are
14 very experienced at what they do, and I give
15 them a lot of room. And they are -- if
16 they're really good, know when to involve me
17 and when not to. But I am involved in details
18 of certain things.

19 Q. Is there any way that you
20 determine what level of detail you tend to get
21 involved in, or is it in their particular
22 areas that you're particularly interested in?

23 A. Yes.

24 Q. What are those?

25 A. Probably more marketing and

1 R. Burns-McNeill

2 product development. And sales, I should say
3 sales as well. Sales, marketing and product
4 development.

5 Q. That's historically now. What
6 about the current job that you have?

7 A. Currently I have no direct
8 reports, because they all report to Sam. I
9 have indirect reports with product development
10 and marketing.

11 Q. If you have no direct reports,
12 how do you stay involved with what the company
13 is doing?

14 A. I have offices, I have an office
15 with them, and I communicate daily via e-mail
16 or in person. I'm physically around.

17 Q. In the current company now, are
18 there regularly scheduled staff meetings?

19 A. No.

20 Q. Do you tend to call staff
21 meetings from time to time?

22 A. No.

23 Q. Have you ever had a staff meeting
24 at Venustas International?

25 A. Staff meaning all employees?

1 R. Burns-McNeill

2 have a Coach label on them, as opposed to a
3 Saks Fifth Avenue which would be a specialty
4 store not vertical, but a specialty store that
5 has some private label, but mostly other
6 brands.

7 Q. Have you ever heard the term
8 turnkey operation?

9 A. Yes.

10 Q. What is that?

11 A. Well, to me it means that in our
12 business and what we're supplying, it means
13 that we deliver completely finished goods with
14 the client's name on them for them to retail.
15 So they don't have to do much, but approve
16 what we are shipping them.

17 Q. All they have to do is open the
18 box and put them on the shelves?

19 A. Right. Well, it's not that easy
20 but, so to speak.

21 Q. You don't envision Venustas
22 International of actually running or operating
23 a retail outlet for a client?

24 A. Absolutely not.

25 Q. When you're developing a product

1 R. Burns-McNeill

2 test that if we don't do it ourselves we
3 oversee it, if it's done someplace where they
4 are.

5 Q. Venustas International doesn't
6 presently have the facilities to do stability
7 testing and safety testing?

8 A. You have to ask Sam.

9 Q. When Venustas International is
10 developing a product for a client -- and I
11 understand you're doing that as we speak,
12 correct?

13 A. Yes.

14 Q. -- the company doesn't procure
15 raw materials for that product, it actually
16 hires an outside company to do that, isn't
17 that true?

18 A. Yes, like all companies do, yeah.

19 Q. And again with the development of
20 a product for a client, you hire an outside
21 company to insure that those new products
22 comply with FDA regulations?

23 A. Very much so.

24 Q. The name Venustas International,
25 can you tell me how that name was selected for

1 R. Burns-McNeill

2 which is what we're doing as a company. So
3 it's a metaphor.

4 Q. What was the name of that person
5 who designed that business card?

6 A. I knew you were going to ask me
7 that. Michelle, but I don't remember her last
8 name, because she was free-lance. We can
9 certainly get it.

10 MR. HEPPT: Can I also have a
11 copy of the business card.

12 MR. SHEPHERD: You have already
13 been given a copy of it. I think it
14 was the first page of the production
15 that we did.

16 MR. HEPPT: Thank you.

17 Q. You told me that you worked at
18 Victoria's Secret Beauty from 1998 through
19 2004?

20 A. Yes.

21 Q. Do you know a person named
22 Barbara Calcagni?

23 A. Yes.

24 Q. Who is that?

25 A. She was someone who worked for

1 R. Burns-McNeill

2 the senior vice president of marketing, she
3 was underneath her, and was overseeing the
4 fragrance business, I think.

5 Q. So she worked for someone who was
6 a direct report to you?

7 A. Correct.

8 Q. Did Ms. Calcagni have a title?

9 A. I think she was the vice
10 president.

11 Q. And when you say she was
12 overseeing the fragrance business, I think you
13 said, what do you mean by that?

14 A. The marketing executive area was
15 segmented under the marketing -- senior
16 marketing person who reported to me.
17 Underneath her the business was segmented into
18 categories, so one person had fine fragrance,
19 one person had color cosmetics, one person had
20 another segment of the business, and so on.

21 Q. Okay.

22 A. And she was one of those people.

23 Q. Have you ever heard the term
24 competitive shopping?

25 A. Yes.

1 R. Burns-McNeill

2 Q. What does that mean?

3 A. That means that you go shopping
4 to look at competitive products that might be
5 on the market in whatever category you're
6 looking to shop for.

7 Q. Sort of like a market research
8 function?

9 A. I don't know if I would call it
10 market research. But it's just a learning
11 exercise to see what's out there.

12 Q. Okay.

13 A. It's not as precise as research,
14 random.

15 MR. HEPPT: Off the record.

16 (Discussion off the record.)

17 Q. Obviously the Ann Taylor
18 relationship is central to this litigation.

19 Can you tell me how the Ann
20 Taylor contract first came to be? I mean, who
21 made the introduction and so forth?

22 A. The introduction was made by a
23 man named George Leads.

24 Q. Who is Mr. Leads?

25 A. He is a publisher of a cosmetic

1 R. Burns-McNeill
2 industry paper publication called Cosmetic
3 World.

4 Q. And why did Mr. Leads get
5 involved in making this introduction?

6 A. He knew what Sam and I were
7 starting as a company. He called me and said,
8 "You know, Ann Taylor would be a great client.
9 And I met Kay Krill at a dinner party the
10 other night, because her next door neighbor is
11 a good friend of mine that I play golf with.
12 And I told her that you would be the company
13 that they should be doing the beauty business
14 with. And they're exploring some other
15 companies like Clarins and I think you should
16 do this."

17 Q. How did Mr. Leads know that you
18 and Sam were starting this company?

19 A. I probably -- I don't know. I
20 don't know whether we told him or he heard
21 about it, I'm not sure.

22 Q. Was there a press release that
23 was issued?

24 A. No, never. But he knows
25 everything, what's going on.

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 DOCKET NO. 07 CIV 4530 (LTS) (THK)

4 AEDES DE VENUSTAS, INC.,

5 Plaintiff,

ORIGINAL

6 vs.

CONFIDENTIAL
DEPOSITION OF:

7 VENUSTAS INTERNATIONAL, LLC,

8 Defendants.
9 -----

SAM GHUSSON

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13
14 T R A N S C R I P T of the stenographic notes of
15 the proceedings, taken in the above-entitled matter, by and
16 before SHAUNNA H. MORAN, a Certified Shorthand Reporter,
17 License No. X100213700, Registered Professional Reporter,
18 and Notary Public of the State of New Jersey, held at the
19 offices of MATHEWS, SHEPHERD, McKAY & BRUNEAU, P.A., 29
20 Thanet Road, Princeton, New Jersey, on Tuesday, June 12,
21 2007, commencing at 10:10 a.m.

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24

25

1 formed between your company and Ann Taylor. It also
2 mentions a second client of your company, do you
3 remember that?

4 A. Yes, I remember that.

5 Q. Do you know who the client is that
6 was referred to?

7 MR. SHEPHERD: This part of the
8 record now goes confidential, attorneys eyes only.

9 MR. HEPPT: Fine.

10 A. Yes, Abercrombie & Fitch.

11 Q. Okay. Do you have a similar
12 arrangement with Abercrombie & Fitch as you have
13 with Ann Taylor?

14 A. Yes.

15 MR. HEPPT: Let's have this document
16 marked as Plaintiff's Exhibit Four. You might as
17 well stay on the special designation of this
18 transcript.

19 (Document received and marked P-4 for
20 identification.)

21 Q. Now, Mr. Ghusson, I've just handed
22 you what's been marked as Plaintiff's Exhibit Four
23 for Identification. Can you tell us what that
24 document is?

25 A. That is a vendor agreement between

1 Venustas International and Ann Taylor.

2 Q. I blanked out for a second when you
3 said that. What kind of agreement is it?

4 A. A vendor agreement.

5 Q. Vendor agreement, okay. Is this the
6 agreement that was the subject of the Women's Wear
7 Daily article on March 16th?

8 A. Yes.

9 Q. Okay. Can you tell me who first
10 initiated contact that lead to this -- this
11 agreement?

12 A. A person by the name of George Leeds.

13 Q. And who is Mr. Leeds?

14 A. He's the editor of Beauty Fashion or,
15 I'm sorry, Cosmetic World.

16 Q. What -- can you describe the role
17 that Mr. Leeds played in making --

18 A. Yeah. Mr. Leeds contacted Robin
19 Burns and asked her if she would like to meet with
20 the chairman of Ann Taylor to discuss an opportunity
21 of developing a product for her.

22 Q. Would that be Ms. Kay Krill?

23 A. Correct.

24 Q. Did Mr. Leeds explain why he was
25 making this -- this phone call to Ms. Burns, other

EXHIBIT C

ORIGINAL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AEDES DE VENUSTAS, INC.,

Plaintiffs,

vs.

VENUSTAS INTERNATIONAL, LLC.,

Defendant.

-----x

DEPOSITION OF ROBERT GERSTNER

Monday, June 11, 2007

New York, New York 10175

Reported by:

Nikki Montello

TOBY FELDMAN
INCORPORATED

One Penn Plaza . NYC 10119 . tel (212) 244.3990 . fax (212) 268.4828 . email@tobyfeldman.com

16

Gerstner

2 restraining order said that you had done a
3 certain amount of business last year in terms
4 of revenue. Do you remember what that number
5 was?

6 A. Our sales in 2006?

7 Q. Yes, um-hum.

8 A. \$1.4 million, approximately.

9 Q. Okay. Now, sitting here today,
10 can you tell me how this would break down
11 between revenue that you get from the Web
12 site, the bricks and mortar store, consulting
13 services and product development? And you can
14 just do it in fractions.

15 A. Product development, consulting
16 and things as such?

17 Q. Yes. Just give me fractions. I
18 don't need numbers.

19 A. I would roughly say but I would
20 need to look into the numbers. But I would
21 say that the store is about 50 percent and
22 on-line and consulting services, including
23 product development, between ourselves and
24 with the other parties, about 25 percent. So
25 50 the store, 25 the on-line business and 25

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17

1 Gerstner

2 percent product development consulting,
3 roughly.

4 Q. Okay. All right. Now, tell me
5 what types of consulting services you do?

6 MR. HEPPT: When you say "you,"
7 you mean the business?

8 MR. SHEPHERD: The company, yes,
9 right.

10 A. The company?

11 Q. Yes.

12 A. Well, we offer different types of
13 consulting. We scent fashion shows and
14 obviously sit with the designers beforehand to
15 discuss that --

16 Q. I'm sorry, you used a word there
17 that I didn't get.

18 A. We scent --

19 Q. Oh, scent.

20 A. -- fashion shows. So you discuss
21 with the designers how do you do this and what
22 to do. We have an extensive corporate
23 business where we scent especially for the
24 holiday season. We sit with our clientele and
25 discuss all of those things.

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18

Gerstner

2 Q. The corporate, would that be
3 gifting? In other words, figuring out what
4 gifts to send out to people?

5 A. That is part of it, yes.

6 Q. What else would it be?

7 A. It would be to the overhandling
8 the logistics, sending it out physically. It
9 goes all over the country. What kind of gift,
10 all that which is involved. We consult third
11 parties in product development, different
12 companies. We have done fragrances, skin
13 care.

Q. Why don't you tell me about that?

15 A. Well, there is one company we
16 developed a fragrance for them which they came
17 out with their own name, published that
18 fragrance.

19 Q. What was the company?

20 A. Back then it was called
21 THREEAsFOUR.

22 Q. THREE AS FOUR.

23 A. They have changed names -- no,
24 they were called AsFOUR back then and that I
25 believe was the name of the fragrance. Now

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19

Gerstner

2 they have changed the name. Now it is
3 THREEAsFOUR. Skin care company in San
4 Francisco called Duchess Marden.

5 Q. What did you do for them?

6 A. Helped them building up the
7 brands as far as the different products are
8 concerned. Do you need a cleanser? Do you
9 need a moisturizer? You should add a toner,
10 you know, ingredients.

11 Q. Now, let's go back one second.
12 Is there any other thing within the corporate
13 business section that you do other than the
14 consulting with them to develop gift programs?

A. I don't understand your question.

16 Q. Okay. Good.

17 You told me that, in response to
18 my question, you told me that what you do for
19 your corporate clientele is that you sit with
20 them around the holidays and you develop a
21 gift program and figure out the logistics of
22 how to get things to other places, is that
23 correct?

24 A. That's part of it. Yes.

Q. Okay. What else is there?

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40

1 Gerstner

2 consulting services on the Web site?

3 A. No.

4 Q. Why is it that you don't
5 advertise any of your consulting services on
6 the Web site?

7 A. Because if we would at this
8 point, assuming there is a big response, we
9 just would not be in a position to handle them
10 yet.

11 Q. Okay. Do you advertise your
12 consulting services anywhere else?

13 A. Like?

14 MR. SHEPHERD: Strike that.

15 Q. Do you advertise your consulting
16 services anywhere?

17 A. Publicly, in print?

18 Q. Right.

19 A. No.

20 Q. Okay. Is there any other way
21 that you advertise your consulting services?

22 A. Word by mouth.

23 Q. That's all?

24 A. Well, constantly in touch with
25 people, you know, you talk about it.

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